THE HON'BLE SRI JUSTICE P.S.NARAYANA

Writ Petition No.4784 of 2007

Date: 20th November, 2007

Between :-

Smt. Dayamani .. Petitioner

And

Government of India, rep. by
Its Deputy Secretary,
Ministry ofShipping,
Road Transport and Highways
(Department. Of Road Transport and Highways)
New Delhi and another ..
Respondents

THE HON'BLE SRI JUSTICE P.S.NARAYANA

Writ Petition No.4784 of 2007

ORDER:-

Heard Sri Noushad Ali, the learned Counsel representing the writ petitioner and Sri S.S.Varma, the learned Counsel representing the respondents.

2. This Court issued *rule nisi* on 8-3-2007 and interim suspension was granted in W.P.No.6106/2007.

3. The Writ Petition is filed for a Writ of Mandamus declaring the notification SO 1753(E) dated 13-12-2005 issued by the 1st respondent herein illegal, arbitrary and violative of Article 300-A of the Constitution of India and

consequently set aside the same including the proceedings culminating in the said order and pass such other suitable orders.

4. It is stated by the petitioner that she is the owner of 0-79 vacant site in Sy.No.683/1, Laxmipuram village, Kallur Mandal, Kurnool District, and that she has been in uninterrupted and peaceful enjoyment of the said property. Further it is averred that the 1st respondent herein in order to acquire some land for widening N.H.No.7on the stretch of land from Km.203.0002 Km.293.000 (Hyderabad-Bangalore Sec.) in Kurnool District appears to have issued a notification SO No.1209(E) dated 29-8-2005 under Section 3A(1) of the National Highways Act 1956 and that under the said notification, the 1st respondent appears to have invited objections from the persons interested in the land and that the 2nd respondent herein has been designated as the Competent Authority for the said purpose. It is also further stated that in the aforesaid application, no details were given with reference to the owners/possessors of the lands who were proposed to be affected. It is stated that vague particulars were given therein indicating only survey numbers, type of land such a private or Government, and the area proposed to be covered. The

area proposed to be covered in each survey number ranges from Ac.0.01 to Ac.8.99. It is further stated that in the aforesaid notification did not disclose the names of the persons who were likely to be affected and inasmuch as the notification was not published in prominent vernacular local newspapers, the petitioner herein could not filed her objections. The 1st respondent ultimately issued notification SO No.1209(E) dated 29-8-2005 under Section 3D(1) of the National Highways Act 1956 and in the said notification the name of the petitioner is shown as the land owner/interested person. The legality and validity of notification had been challenged on several grounds referred to in Grounds *a, b, c, d, e & f.* Further it is stated that the petitioner has been in possession of her respective land till date and that the 2nd respondent has not passed any Award not has he taken any other steps to take over the land of the petitioner and that she was not aware of the acquisition proceedings published either in the newspaper or in the Gazette. The petitioner further stated that she is a housewife and her husband is not acquainted with the legal procedures and that she came to know of these proceedings through another land owner Sri M.Ramesh Babu. It is also stated by the petitioner that the said Ramesh Babu informed her about the acquisition

proceedings and that he had approached this Court seeking justice in the matter and in the circumstances, there are no latches on her part in filing this Writ Petition. Further it is stated that it is therefore just and expedient that this Court may be pleased to suspend the operation of the notification SO No.1753 (E) dated 13-12-2005 issued by the 1st respondent herein so far as the petitioner herein is concerned, pending disposal of the Writ Petition in the interest of Justice.

5. In the counter affidavit filed by R.1 it is stated that the Development and Maintenance of National Highway-7 was entrusted to National Highway Authority of India as per NHAI Act, 1988 and that NHAI has taken widening of existing two lane of National Highway-7 as part of North-South corridor. Extensive survey work was carried out by the DPR Consultants M/s.DALAL MOTT MAC DONALD from Km.211.000 to Km.336.000 of Hyderabad-Bangalore Section and proposed the alignment based on the side consideration and also considering various technical aspects and that accordingly, NHAI has initiated land acquisition proceedings pertaining to the petitioner's site abutting to National Highway-7 of Hyderabad-Bangalore Section which is inevitable for four lane widening. Further it is averred that it is an admitted fact that Section 3A

Notification under N.H.Act dt.29-8-2005 was got published in newspapers in the prominent local newspaper in vernacular language “The Eenadu” on 8-10-20095 and in “The Indian Express” on 9-10-2005 and before issuing the Notification under Section 3A, survey was conducted and stones were erected showing the extent of sites affecting in widening of the road and that the petitioner is well aware of the fact that their land is getting affected in widening of the road and acquisition of their shops/sites by the NHAI. It is also stated that 3A Notification was issued in the standard format adopted by the NHAI as per N.H.Act, in which only survey numbers and extent of areas proposed to be acquired are mentioned and hence there is no vagueness in the said notification. Further it is stated that as per the notification, the petitioners have to file their objections within a period of 21 days from the date of notification and that it is an admitted fact that the petitioners have not filed any objection with regard to the aquisition of their property and now they cannot question the notification on flimsy grounds. It is also stated that the petitioner knows about the said Notification, but could not submit her objection to the 2nd respondent herein within 21 days as required under the Act and Notification under Section 3A and also stated that the other persons who are

interested in the land have submitted their objections within the time and the same have been disposed of by the 2nd respondent after affording an opportunity of hearing the objections and that the petitioner's land is abutting to the roadside margin and it is not true to say that the land of petitioner's is situated far away from the main road. It is further averred that the alignment was approved based on the DPR Consultants proposal and that the DRP consultant has followed the norms while designing highway and that the radius of curve in front of the land of petitioner is 2000 m., whereas, as per 1RC radius is more than 500m is permitted and hence there is no technical fault in design. Further it is averred that the authorities have taken all steps to reduce the cost of widening of the road either by paying compensation or construction of bridges wherever it is necessary and that the estimation of the petitioners for widening of the road at their place is hypothetical and not based on any merits. It is also stated that after following the procedure, a Notification under Section 3D(1) was also got published on 13-12-2005 and that as per the Act, under Section 3D(2), on the publication of the declaration under Section 3D(1), the land shall vest absolutely in the Central Government free from all encumbrances and as such, the

land of the petitioner's stand vested with Central Government and the petitioners are entitled for compensation from the 2nd respondent. Further it is averred in paras 9, 10, 11 and 12 as hereunder:-

"It is submitted that with regard to the other aspect of change of alignment, the alignment proposal was fixed by DPR consultant keeping in view of Geometrics of road, road safety during construction and after construction etc. As such, the change of alignment for the benefit of an individual cannot be considered.

It is submitted that the change of alignment as suggested by the petitioner to realign the road is not practice in view of the site conditions. The matter involves purely technical and the petitioner has no right to ask for the same. However and in what manner a road should be laid is a matter of policy, which is within the exclusive domain of the State.

It is submitted that as stated above, the entire procedure for aquisition of the land in question was followed by the respondents in acquiring the land of the petitioners. Accordingly, a final notification under Section 3G of N.H.Act was got published on 13-1-2006. All the other persons have responded to the

said notification and the 2nd respondent has to conduct the Award enquiry for the payment of compensation. The petitioner is entitled for compensation.

It is submitted that as per direction of the Hon'ble Court in W.P.M.P.No.6074/2007 work in progress was stalled which involves a huge loss to the public exchequer. Unless this Hon'ble Court vacate the interim directions granted on 8-3-07 in W.P.M.P.No.6074/2007 in W.P.No.4784/2007 irreparable loss and damage would be caused to the public money and the public at large would suffer for non-progress of the widening of the road at the petitioners place."

6. The Counsel on record made certain submissions. Sri Noushad Ali had brought to the notice of this Court the order made by this Court in W.P.No.15211/2007 and would maintain that since the facts are similar, the Writ Petition be disposed of on similar lines. Sri S.S.Varma, the learned standing Counsel representing respondents placed strong reliance on the decision of the Division Bench in W.A.No.504/07 and would maintain that inasmuch as the question of compensation is not the subject matter of the Writ Petition, the said question left to

be untouched.

7. This Court in W.P.No.15211/07 dt.1-10-2007, observed at para 12 as hereunder:-

> *The relevant provision of the non-applicability of Land Acquisition Act to the acquisition under The National Highways Act, 1956, i.e., Section 3J of the Act, already had been referred to supra. However, it was contended by the learned Counsel representing the 2nd respondent that the same principle is applicable even in the case of acquisition under this Act. The learned Counsel representing the writ petitioners placed strong reliance on the decision of the Apex Court in* ***Competent Authority v. Bangalore Jute Factory and Others (I (2006) CLT 108 (S.C.)*** *wherein the Apex Court while dealing with the provisions of the Land Acquisition Act and also the provisions of the Act in question in the present case observed at para-15 :*
>
> > *"Normally, compensation is determined as per the market price of land on the date of issuance of the notification regarding acquisition of land. There are precedents by way of judgments of this Court where in similar situations instead of quashing the impugned notification, this Court shifted the date of notification so that the land owners are adequately compensated. Reference may be made to: (a) Ujjain Vikas Pradhikaran v. Rajkumar Johri and others (1992) 1 SCC 328, (b) Gauri Shankar Gaur and others v. State of U.P. and others (1994(1) SCC 92, (c) Haji Saeed Khan and others v. State of U.P. and others (2001(9) SCC 513). In that direction the next step is what should be the crucial date in the facts of the present case for*

determining the quantum of compensation. We feel that the relevant date in the present case, ought to be the date when possession of the land was taken by the respondents from the writ petitioners. This date admittedly is 19th February, 2003. We, therefore, direct that compensation payable to the writ petitioners be determined as on 19th February, 2003, the date on which they were deprived of possession of their lands. We do not quash the impugned notification in order not to disturb what has already taken place by way of use of the acquired land for construction of the national highway. We direct that the compensation for the acquired land be determined as on 19th February, 2003 expeditiously and within ten weeks from today and the amount of compensation so determined be paid to the writ petitioners after adjusting the amount already paid by way of compensation within eight weeks thereafter. The claim of interest on the amount of compensation so determined is to be decided in accordance with law by the Appropriate Authority. We express no opinion about other statutory rights, if any, available to the parties in this behalf and the parties will be free to exercise the same, if available. The compensation as determined by us under this order along with other benefits, which the respondents give to parties whose lands are acquired under the Act should be given to the writ petitioners along with what has been directed by us in this judgment."

This Court further observed at para 13 as hereunder:-

"In the light of the respective stands taken by the parties, the provisions of the Act referred to supra and also the language employed in Section 3A of the Act and on a careful scrutiny of the notifications issued, this Court is of the considered opinion that the notifications as such

do not suffer from any legal infirmity warranting any interference by this Court under Article 226 of the Constitution of India and hence the said notifications are not liable to be quashed. However, in the light of the ratio laid down by the Apex Court in the decision referred (1) supra, which had been decided in the context of the Act and the notification under Section 3A of the Act, though the impugned notifications are left untouched, it is made clear that the relevant date to determine the compensation to be taken as the date when possession of the land had been taken by the respondents from the writ petitioners and the claim of interest on the amount of compensation so determined to be decided in accordance with Law by the appropriate authority."

With the said directions, ultimately, the said Writ Petition was disposed of. It is needless to say that this Court had referred to a decision of the Apex Court in ***Mohanji and another v. State of U.P. and Others (J.T. 1995 (8) S.C., 599)***. The Division Bench of this Court in W.A.No.504/2007 observed at the operative portion as hereunder:-

"In view of the above discussion, we hold that the learned Single Judge was not justified in quashing notification dated 9-10-2006 on the ground that the preliminary notification was vague and, on that account, the writ petitioners were deprived of the opportunity to file objections.

For the reasons stated above, the appeal is allowed. The impugned order is set aside and the Writ Petition filed by the respondents is dismissed."

The decision in ***Competent Authority v. Barangore Jute Factory (2005-JT-10-50)*** also had been relied upon.

8. As can be seen from the Judgment of the learned Division Bench, the Division Bench was concerned with the validity of the notification and the quashing of the notification by the learned Single Judge was set aside by the learned Division Bench. It is no doubt pointed out by the learned Counsel for the respondents that since the observations relating to compensation being not the subject matter of the present Writ Petition, the said question to be left open. As already referred to supra, in similar fact situation, while disposing of W.P.No.15211/07, the Judgment of the Apex Court in ***Mohanji and another v. State of U.P. and Others (J.T. 1995 (8) S.C., 599)*** was referred and also followed and it was observed that though the impugned notification was left untouched, it is made clear that the relevant date to determine the compensation to be taken as the date when possession of the land had been taken by the respondents from the writ petitioners and the claim of interest on the amount of compensation so determined to be decided in accordance

with law by the appropriate authority.

9. Accordingly, in the light of the said observations, the Writ Petition is disposed of. No order as to costs.

_____

Justice P.S.Narayana

20th November, 2007

smr